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Attorney for Defendant Interdent Service Corporation

U.S. COURTS

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REC'D  
CLERK CAMERON S. BURKE  
IDAHO

UNITED STATES DISTRICT COURT  
DISTRICT OF IDAHO

POCATELLO DENTAL Group, P.C., an  
Idaho Professional Corporation

Plaintiff,

v.

INTERDENT SERVICE  
CORPORATION, a Washington  
Corporation

Defendant.

Case No.: CV-03-450-E-LMB

**AFFIDAVIT OF IVAR CHHINA IN  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR A PRELIMINARY  
INJUNCTION**

STATE OF CALIFORNIA )  
 ) ss.  
County of Los Angeles )

1. I am the president of defendant InterDent Service Corporation ("ISC"), a Washington corporation. The following is true to the best of my knowledge, information and belief based upon my personal knowledge, my review of ISC business records and my access to the institutional knowledge of the company.

2. In October 1996, GMS Dental Group Management, Inc. ("GMS") acquired (the "Acquisition") all of the nonprofessional assets of the dental practice presently conducted by

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plaintiff Pocatello Dental Group P.C., formerly known as Idaho Dental Group P.C. (the "Group"), in exchange for payment of \$2.8 million in cash and stock to the shareholders of the Group, including affiants L.R. Misner, Jr. and Dwight Romriell, who were each paid \$400,000. Both Dr. Misner and Dr. Romriell took their \$400,000 entirely in cash.

3. In connection with and as a material part of the consideration for the Acquisition, the Group entered into a Management Agreement with GMS dated October 11, 1996, (the "Management Agreement"), a copy of which is attached hereto as Exhibit A.

4. GMS subsequently changed its name to Gentle Dental Management, Inc. ("GDMP"). GDMP was later merged with and into Gentle Dental Service Corporation ("GDSC"). GDSC then changed its name to InterDent Service Corporation ("ISC"), which succeeded to all of GMS's right, title and interest in and to all of GMS's assets, including GMS's right, title and interest in and to the Management Agreement.

5. ISC provides management services, facilities and equipment to the Group pursuant to the terms of the Management Agreement. Professional and cost-effective management is necessitated by the structure of this standard contractual arrangement. The Group's shareholder dentists are compensated on the basis of 38 percent of their net collections, regardless of the costs to ISC of managing their practice. ISC employs the nonprofessional staff, leases the facilities and owns the equipment. As a result of this arrangement, ISC rather than the Group dentists, bears the risks and rewards of cost control.

6. If the Group dentists had unlimited discretion to increase costs as they seek in this action, these costs would be borne entirely by ISC, depriving ISC of any of the consideration for which its predecessor entered into the Management Agreement and paid the Group's shareholder

dentists \$2.8 million in cash and stock in 1996. Under these circumstances, the entire economic arrangement embodied in the Management Agreement would be undermined.

7. Attached hereto as Exhibit B is a copy of a report prepared by a consultant retained solely by the Group to evaluate its practice. The Group's consultant concluded that despite having the use of ISC's \$2.8 million for seven years, the Group's shareholder dentists "are having Seller's remorse." (Exhibit B at 14.) The Group's consultant urged the Group dentists to "respect the financial policy and procedure that has been established by the management company." (*Id.* at 8.) The consultant provided the Group dentists the following analogy: "It is sort of like when you have sold a car to a person and yet you want to keep the car to drive. The person you sold the car will usually not drive the way you do . . . but, they have paid for the car. Give it to them." (*Id.* at 12.) Unfortunately, the Group has a history of disregarding this advice, to the detriment of the practice.

8. For example, in the first quarter of 2003 alone, the Group wrote off over \$76,000 in dentistry as "professional" or "courtesy" discounts. ISC instructed the Group dentists that under the Management Agreement, ISC had responsibility for billing matters and that such free services to friends and relatives would need approval from ISC management. In response, ISC received communications such as Exhibit C from Dr. Dwight Romriell's lawyer threatening ISC and alleging, among other things, "HIPAA violations" and "federal mail violations." The Group even insisted that its counsel attend the Joint Operations Committee (the "JOC") meetings ISC scheduled to try to resolve the Group dentists' complaints in a businesslike and professional manner.

9. On May 9, 2003, ISC filed for bankruptcy reorganization under Chapter 11, *In re InterDent Services Corporation*, U.S. Bankruptcy Court for the Central District of California

Case No. 03-13494, and obtained an order authorizing it to "operate its business and to perform its obligations, in the ordinary course of business pursuant to the Management Agreements with the Professional Corporations. . . ." (Exhibit D.)

10. On May 16, 2003, ISC received a letter from the Group's shareholder dentists' individual counsel threatening unilateral termination of the Management Agreement, primarily on the basis of a disagreement with ISC over the financial controls to which the Group agreed in the Management Agreement and which are the critical component of that agreement. (Exhibit E.) ISC advised the Group's shareholder dentists' individual counsel that a JOC meeting would be the best forum for discussion of the Group's shareholder dentists' concerns and that any action to terminate the Management Agreement would be contrary to the automatic stay under 11 USC § 1132. (Exhibit F.)

11. Consequently, in the bankruptcy, the Group's shareholder dentists made many of the same claims as they do here (other than as related to Dr. Romriell) both in an adversary proceeding and in objecting to ISC's assumption of the Management Agreement. On October 3, 2003, only six days before they filed this action, the Group's shareholder dentists, in a stipulation, withdrew all of their claims and objections to ISC's assumption of the Management Agreement. The Group's shareholder dentists stipulated their agreement that "[t]he Contract [*i.e.*, the Management Agreement] is assumed by debtor pursuant to the Plan [of reorganization], and no prepetition cure payments are due upon assumption." (Exhibit G at 3.) The Bankruptcy Court approved ISC's plan of reorganization on October 9, 2003, including the Group's stipulated dismissal. Nonetheless, within a week of agreeing to dismiss all of their claims, the Group refiled them in this action.

12. Dr. Romriell provided written notice of his resignation on April 11, 2003. This gave him six months to establish a practice outside the area of his noncompete agreement with the Group. In fact, Dr. Romriell has set up a new practice outside of the Group, as indicated in the attached Exhibit I, which indicates that he has an office and is accepting patients. This is inconsistent with what Dr. Misner, who is the president of the Group, told me in early October 2003. This discussion was in the context of a negotiation to give Dr. Romriell additional time to complete his establishment of his own office. Dr. Misner informed me that Dr. Romriell intended to set up his own practice by approximately December 2003, but he did not inform me that Dr. Romriell had, in fact, already done so.

13. I continued my discussions with Dr. Misner through the weekend of October 11 and October 12, 2003. On October 10, 2003, shortly after (we later discovered) the Group obtained its TRO without notice to ISC, I received a letter from Dr. Misner reneging on an offer to resolve this dispute. (Exhibit H.) In response, I called Dr. Misner, and we had conversations over the weekend continuing to work toward a resolution. Dr. Misner did not tell me that the Group had already obtained a secret TRO or, again, that Dr. Romriell had already opened an office. The Group did not disclose the TRO to ISC until it delivered the papers to our office manager in Pocatello on Monday, October 13, 2003.

14. ISC did not discover Exhibit I, with the details of Dr. Romriell's new office, until Friday, October 24, 2003. ISC later learned of Exhibit J, confirming that Dr. Romriell was treating TMJ patients in Pocatello. ISC immediately demanded that the Group withdraw the TRO. The Group refused to do so.

15. Since Dr. Romriell has started seeing patients at his private office, there have been large blocks of time during which Dr. Romriell has no appointments at the Group's office.

For example, despite being scheduled to work from 8 a.m. to 1 p.m. on Friday, October 31, 2003 at the Group's office, Dr. Romriell did not, in fact, see any patients.

16. ISC does not claim the right to hire or fire Dr. Romriell. He has been employed by the Group, not by ISC. The right ISC has under the Management Agreement is, in general, to approve or disapprove costs incurred by Group that ISC will have to bear. Here such costs would include Dr. Romriell's numerous staff personnel and his allocated share of office overhead. As illustrated in Exhibit K, the average weekly cost to ISC of employing staff for Dr. Romriell between January 2003 and September 2003 was over \$1,900.

17. If rehired, Dr. Romriell would be an employee of the Group. ISC only claims the right explicitly stated in Article 5.2 of the Management Agreement, which provides: "Group shall not negotiate or execute any Provider Subcontract, Employment Agreement, or any amendment thereto, or terminate any Provider Subcontract or Employment Agreement without the approval of the Joint Operations Committee." The JOC is composed of representatives of ISC and the Group. Under the plain language of Article 5.2, therefore, ISC has the contractual right to review and participate in JOC review of hiring staff to ensure such hiring makes economic sense.

18. On September 8, 2003, ISC through counsel wrote to the Group dentists proposing a JOC meeting with regard to Dr. Romriell. (Exhibit L.) Before learning that Dr. Romriell had already opened his new office, ISC indicated that it remained willing to have such a meeting at which the Group could present the business case, if any, for rehiring Dr. Romriell as opposed to referring patients to him when and if necessary. (Exhibit M.) If the JOC has not met to discuss other hiring decisions, this only means that the other decisions were not so problematic.

19. During the pendency of the TRO and any preliminary injunction, ISC will be damaged from a cash-flow perspective because it has to pay for Dr. Romriell's numerous staff and his overhead on a current basis but will only be reimbursed, if ever, depending upon collections. However, it is impossible to comply fully with the TRO because the ex parte TRO requires ISC to keep an "Autumn Hoskins" on staff. Our records show no Autumn Hoskins employed by ISC.

20. Collecting payments from insurance plans for TMJ work is often time-consuming and problematic. Consequently, ISC prefers not to work with any group containing a dentist who centers his or her practice around TMJ work. Indeed, with the exception of the Group and Dr. Romriell, ISC does not work with any group containing a dentist who focuses predominantly on TMJ work.

21. ISC is similarly damaged if the Court continues to manage the practice by injunction if it cannot effectively manage its staff. Actions by the Group and now the TRO have caused confusion and have undermined the authority of the ISC office manager. This damage was recognized by the Group's consultant, who concluded, for example, "Drs must NOT be negative about the management company in-house or in the community. Unfortunately, the staff and community perceive contention and conflicts" and "[s]taff knows too much about the issues between Drs. and corp. It's like putting kids against parents or step-parents." (Exhibit B at 6, 13.)

22. The practice's expenses for supplies and other items increased substantially in September 2003, so much so as to cause the practice to be unprofitable on an accrual basis.

23. ISC has not rescheduled Dr. Romniell's patients or denied the Group dentists access to files.


24. The Group's shareholder dentists have not offered to rescind the Management Agreement and repay to ISC the \$2.8 million they obtained in the Acquisition plus appropriate interest.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
Ivar Chhina

SUBSCRIBED AND SWORN to before me this 31<sup>st</sup> day of October, 2003.



  
Notary Public for California  
Residing at El Segundo, CA  
My commission expires April 17, 2005



**CERTIFICATE OF SERVICE**

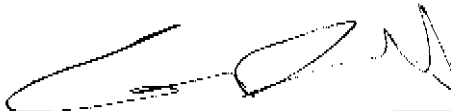
I hereby certify that I served the foregoing **AFFIDAVIT OF IVAR CHHINA IN  
OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION** on  
the following named person(s) on the date indicated below by

- ☐ mailing with postage prepaid
- ☐ hand delivery
- ☐ facsimile transmission
- ☒ overnight delivery

to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said person(s)  
at his or her last-known address(es) indicated below.

Gary L. Cooper  
Ron Kerl  
James P. Price  
COOPER & LARSEN  
151 N. 3rd Avenue, Ste. 210  
PO Box 4229  
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Phone: (208) 235-1145  
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DATED: this 27<sup>th</sup> day of November, 2003.



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G.Rey Reinhardt  
Attorneys for Defendant